

M FOR:

Steve

S. 272 was presented
to the President yesterday,
2 Aug. Too late to fix.
PS worked on this bill, so
you might check with him.

Date

Signed into
law 11 Aug. 1983

Pub. Law

98-72

STAT

Page Denied

OGC 83-06411

29 July 1983

OLL #

83-1739

MEMORANDUM FOR: Director, Office of Legislative Liaison

FROM:

Assistant General Counsel

STAT

SUBJECT: Conference Report on S. 272/H.R. 1043

REFERENCE: Memo from DC/LED/OGC, dated 29 June 1983, same subject (OGC 83-05454)

Reference memorandum from [redacted] addressed continuing STAT
Congressional action regarding subject legislation. Paragraph 3
of the memorandum raises an issue of particular concern to the
Agency. The legislation contains language which would provide
that the determination regarding sole source procurements rests
with the head of the procuring activity or his deputy on a
non-delegable basis. On occasion we have asserted that the head
of the procurement activity for this Agency is the Director of
Logistics and not the Director of Central Intelligence. If the
latter is the interpretation of the members of Congress, it
provides an entirely unworkable system to which we should object.
If the former is the intent, it will restrict current practice of
the Agency, which is to delegate this authority to contracting
officers or, at a minimum, division chiefs. It is our position
that we should retain maximum flexibility and attempt to have the
language liberalized or eliminated from the legislation. You may
wish to seek the views of the Procurement Management Staff,
Office of Logistics, on this matter, prior to any response to
Congress.

STAT

Attachment:

Referent

6/29/83

OGC 83-05454

29 June 1983

JCL
Jm
MS

MEMORANDUM FOR: [REDACTED]

STAT

Logistics and Procurement Law Division, OGC

FROM: [REDACTED]

STAT

Legislation Division, OGC

SUBJECT:

Conference Report on S. 272/H.R. 1043

1. As per our conversation, attached is a copy of the "Conference Report on S. 272, Commerce Business Daily," the conference report on S. 272/H.R. 1043.

2. The most important thing to note is on page H 4433 in Section 2 of the "Joint Explanatory Statement of the Committee of Conference." As that Section indicates, the conferees rejected the Senate approach on the exemption for classified procurements to the general requirement of notice in the Commerce Business Daily and instead determined to retain existing law. As you know, the Agency is well served by existing law. Hence, this return to existing law is even better than the language we negotiated with the Senate and thus is a real gain.

3. You should also note Section 11 of the Statement. As that Section indicates, the conferees determined to adopt a prohibition against sole source contracts, notwithstanding any other provision of law, except those where the head of the procuring activity or his deputy, on a nondelegable basis, approves them. Nondelegability was not in either Bill and thus did not appear to be an issue going into conference. My own belief, however, is that the conferees included it in deference to the Senate, given that the Senate retreated on so many other issues.

4. The Senate passed the Conference Report on June 27, 1983. ~~House action:~~ [REDACTED]

STAT

Legislation Division
Office of General Counsel

Attachment

June 23, 1983

CONGRESSIONAL RECORD — HOUSE

H 4431

time when our contemporary Explorer has just left our solar system for worlds beyond. It is appropriate that we plan to celebrate the victory of a man who refused to believe that the world was flat at a time when the *Challenger* shuttle circles our globe far above the oceans which Columbus sailed.

The accomplishments of today are the result of the same courage, the same creativity and the same conviction exemplified by Christopher Columbus.

The Quincentenary Jubilee does not just honor Christopher Columbus' discovery of America. It embodies our own respect and reverence for all who rise to meet the challenges—and so by doing—discover new worlds.

APPOINTMENT OF CONFEREES ON H.R. 3135, LEGISLATIVE BRANCH APPROPRIATIONS, 1984

Mr. OBEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3135) making appropriations for the legislative branch for the fiscal year ending September 30, 1984, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees: Messrs. FAZIO, OBEY, MURTHA, TRAXLER, Mrs. BOGGS, and Messrs. HIGHTOWER, WHITTEN, LEWIS of California, CONTE, MYERS, and PORTER.

There was no objection.

CONFERENCE REPORT ON S. 273, EXTENSION OF 8(A) PILOT PROGRAMS

Mr. MITCHELL submitted the following conference report and statement on the Senate bill (S. 273) to amend section 8(a)(1) of the Small Business Act:

CONFERENCE REPORT (H. REPT. No. 98-262)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

Sec. 1. (a) Clause (b) of the first sentence of section 8(a)(1) of the Small Business Act is amended by striking out "as shall be designated by the president within 60 days after the effective date of this paragraph," and inserting in lieu thereof "(other than the Department of Defense or any compo-

nent thereof) as shall be designated by the President,"; and

(b) The designation of an agency pursuant to the amendment made by subsection (a) shall be made not later than sixty days after the date of enactment of this Act.

Sec. 2. The last sentence of section 8(a)(1) of the Small Business Act is amended to read as follows: "No contract may be entered into under subparagraph (B) prior to October 1, 1983 nor after September 30, 1985."

Sec. 3. The last sentence of section 8(a)(2) is amended to read as follows: "The authority to waive bonds provided in this paragraph (2) may not be exercised prior to October 1, 1983 nor after September 30, 1985."

Amend the title so as to read: "An Act to amend section 8(a) of the Small Business Act."

And the House agree to the same.

PARREN J. MITCHELL.

NEAL SMITH.

JOSEPH P. ADDABBO.

RON WYDEN.

DENNIS E. ECKART.

TOM LUKE.

JOSEPH M. McDADE.

SILVIO O. CONTE.

WM. BROOMFIELD.

LYLE WILLIAMS.

Managers on the Part of the House.

LOWELL P. WEICKER, Jr.

RUDY BOSCHWITZ.

LARRY PRESSLER.

SAM NUNN.

CARL LEVIN.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principle differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. 8(A) PROCUREMENT PILOT

P.L. 95-507 authorized an 8(a) pilot program which expired September 30, 1980. Under the provisions of the pilot, the President was authorized to select one agency over whom SBA would be given the authority to take procurement contracts for inclusion in SBA's 8(a) program for the development of minority enterprise. The President selected the Department of the Army.

The Senate bill would reopen the pilot program and require the President to select a new agency, other than the Defense Department or a component thereof, within sixty days. The pilot program would expire twenty months after enactment (sixty days for the President to act plus eighteen months for the pilot to operate).

The House amendment also would reopen this pilot program on October 1, 1983 for a period of two years, but would not restrict the authority of the President as to the

agency to be selected nor would it require the selection to be done within any particular time frame.

The conference substitute reopens this pilot program on October 1, 1983 and requires the President, within sixty days after enactment, to select a new agency, other than the Defense Department or a component thereof, to participate in the program. The pilot is effective through September 30, 1985.

2. SURETY BOND PILOT

P.L. 95-507 also authorized a surety bond pilot program which expired September 30, 1980. Under this pilot, SBA was authorized to waive surety bond requirements for 8(a) contractors which are start-up concerns and which have not been participating in the 8(a) program for more than one year. It took SBA more than two years to adopt final regulations. The Agency never granted any waivers.

The Senate bill does not reopen this pilot program.

The House amendment, effective on October 1, 1983, would reopen this pilot program through September 30, 1985.

The conference substitute also reopens this pilot program on October 1, 1983 through September 30, 1985.

The conferees recognize that by its terms the use of this authority will be limited under the eligibility requirements. Under the statute, before any bond requirement is waived, the Administration must determine, among other things, that the 8(a) small business concern is unable to obtain the requisite bond either from a surety company or by using the Administration's guarantee program. Furthermore, the Administration must determine that the contractor has the ability to perform the contract.

On the other hand, the conferees expect that the Administration will take the necessary steps to implement this pilot program and not take any action which would unnecessarily limit potential eligible participants by excluding from entrance into the regular 8(a) program firms which might be eligible for a bond waiver if admitted to the program.

PARREN J. MITCHELL.

NEAL SMITH.

JOSEPH P. ADDABBO.

RON WYDEN.

DENNIS E. ECKART.

TOM LUKE.

JOSEPH M. McDADE.

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WILLIAM S. BROOMFIELD.

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Managers on the Part of the House.

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RUDY BOSCHWITZ.

LARRY PRESSLER.

SAM NUNN.

CARL LEVIN.

Managers on the Part of the Senate.

CONFERENCE REPORT ON S. 272, COMMERCE BUSINESS DAILY

Mr. MITCHELL submitted the following conference report and statement on the Senate bill (S. 272) to improve small business access to Federal procurement information:

CONFERENCE REPORT (H. REPT. No. 98-263)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, having met, after full and free conference, have agreed to rec-

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CONGRESSIONAL RECORD — HOUSE

June 23, 1983

ommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

"(a) Section 8(e) of the Small Business Act is amended to read as follows:

"(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication *Commerce Business Daily*, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph 2 were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) a statute provides that the procurement be made through another Federal department or from a specified source; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal from an educational institution that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

"(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

"(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the *Commerce Business Daily*, except if the solicitation is for procurement of requirements categorized as research or development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclose competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act, a Federal department may not commence negotiations for the award of a sole source contract for more than \$1,000,000 in fiscal year 1984, for more than \$500,000 in fiscal year 1985 and for more than \$300,000 in fiscal year 1986 and each year thereafter unless—

"(A) the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such sole source contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(5) In the case of all procurement actions in excess of \$25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the *Commerce Business Daily*.

"(6) As used in this subsection—

"(A) the term 'sole source contract' means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

"(B) The term 'unsolicited proposal' means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interests to the department)."

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

And the House agree to the same.

PARREN J. MITCHELL,
NEAL SMITH,
JOSEPH P. ADDABBO,
RON WYDEN,
DENNIS E. ECKART,
TOM LUKEN,
JOSEPH M. MCDADE,
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JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

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The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principal differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Under section 8(e) of the Small Business Act, the Secretary of Commerce is directed to obtain and publish notice of Federal procurements above stated dollar thresholds, with ten enumerated exemptions. The existing statute does not, however, provide for any time intervals between the date of publication of the notice and the awarding of the procurement contract. Both the Senate bill and the House amendment prohibit a Federal department from issuing a solicitation for at least fifteen days after the date of publication of a notice of the procurement in the *Commerce Business Daily* and further prohibit Federal agencies from foreclosing competition for the procurement for an additional thirty days after either the issuance of the solicitation or in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a notice of intent to place the order.

The conferees intend that this authority to publish notices of Federal procurements should continue to be vested in the Secretary of Commerce, or in any newly-created cabinet department that encompasses the trade functions of the Commerce Department. The conferees further expect that any other effort to transfer this authority from the department will be undertaken legislatively.